

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHARLES HOLBROOK, No. 767925,

Petitioner,

Case No. 2:17-cv-12548
Hon. George Caram Steeh

v.

STEVE RIVARD,

Respondent.

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**OPINION AND ORDER TRANSFERRING CASE TO THE COURT
OF APPEALS PURSUANT TO 28 U.S.C. § 2244(b)(3)(A)**

Petitioner Charles Holbrook, (“Petitioner”), incarcerated at the St. Louis Correctional Facility in St. Louis, Michigan, has filed yet another petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.¹ Petitioner was convicted of two counts of producing child sexually abusive material, Mich. Comp. Laws § 750.145c(2), two counts of allowing a child to engage in child sexually abusive activity, Mich. Comp. Laws § 750.145c(2), two counts of possessing child sexual abusive material, Mich. Comp. Laws § 750.145c(4), accosting a

¹This is at least Holbrook’s sixth federal habeas petition filed in 2017 in this District. See E.D. Mich. Case Nos. 17-12251, 17-11477, 17-11232, 17-11068, and 17-11606. He has filed approximately a dozen other habeas petitions attacking his convictions and sentences since 2013. See E.D. Mich. Case Nos. 13-13137, 16-10684, 16-10881, and 16-11901; W.D. Mich. Case Nos. 16-00142, 16-00140, 16-00062, 17-00390, 16-00171, 13-00663, 15-00056, and 15-00131.

child for immoral purposes, Mich. Comp. Laws § 750.145a, and felon in possession of a firearm, Mich. Comp. Laws § 750.224f, following a jury trial in the Kent County Circuit Court. The current petition asserts: “I am held in this state prison without due process. ‘Prosecution of citizen who is unaware of any wrongdoing for wholly passive conduct violates due process.’ *United States v. Layne*, 43 F.3d 127 [(5th Cir. 1995)].” Dkt. 1, at 1.

Petitioner has filed at least one prior petition for a writ of habeas corpus challenging the convictions at issue in the present case that was denied on the merits. See *Holbrook v. Rapelje*, No. 2:13-cv-13137 (E.D. Mich. April 1, 2016). Before a second or successive habeas petition is filed in a federal district court, a habeas petitioner must move in the appropriate court of appeals for an order authorizing the district court to consider the petition. 28 U.S.C. § 2244(b)(3)(A); *Stewart v. Martinez-Villareal*, 523 U.S. 637, 641 (1998). A federal district court does not have jurisdiction to entertain a successive petition for writ of habeas corpus in the absence of an order of authorization from the court of appeals. *Ferrazza v. Tessmer*, 36 F. Supp. 2d 965, 971 (E.D. Mich. 1999). Unless the Sixth Circuit Court of Appeals has given its approval for the filing of a second or successive petition, a district court in the Sixth Circuit must transfer the petition or motion to the Sixth

Circuit Court of Appeals. *Id.* at 971; See also *In Re Sims*, 111 F.3d 45, 47 (6th Cir. 1997).

The current habeas petition is a successive petition within the meaning of § 2244(b)(3)(A). This Court therefore lacks jurisdiction to entertain the petition in the absence of authorization from the Sixth Circuit. § 2244(b)(3)(A). If Petitioner wishes to seek habeas relief with respect to his state court conviction, he must start by filing a motion to authorize a successive petition in the Sixth Circuit. As Petitioner has been repeatedly informed, this Court does not have jurisdiction to consider his habeas petitions absent the order of authorization.

IT IS THEREFORE ORDERED that the Clerk of the Court transfer this case to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631 and *In Re Sims*, 111 F.3d 45, 47 (6th Cir. 1997).

Dated: August 16, 2017

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on August 16, 2017, by electronic and/or ordinary mail and also on Charles Holbrook #767925, St. Louis Correctional Facility, 8585 N. Croswell Road, St. Louis, MI 48880.

s/Barbara Radke
Deputy Clerk